

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

IN THE MATTER OF)
)
THEODORE R. GRABLIS,)
)
Grievant)
v.)
)
DEPARTMENT OF FINANCE)
STATE LOTTERY OFFICE,)
)
Employer/Agency.)
_____)

DOCKET NO. 96-08-109
ORDER ON MOTION TO DISMISS
DECISION ON THE MERITS

BEFORE Katy K. Woo, Chair, Walter Bowers, Member, Dallas Green, Member, and John Schmutz, Member, constituting a quorum of the Merit Employee Relations Board (the "Board") pursuant to 29 Del. C. Section 5908(a).

AND NOW, this 18th day of September, 1997, before the Board is a motion by the State Lottery Office to dismiss the appeal filed by the grievant Theodore R. Grablis.

On December 12, 1997, the Merit Employee Relations Office received a timely appeal by Mr. Grablis from a Step 4 decision by the State Personnel Office. Mr. Grablis alleges a violation of two Merit Rules, Rule 13.0240 (transfer) and Rule 19.0000 (age discrimination).

The day before the hearing on September 18, 1997, the State Lottery Office filed a motion to dismiss the part of the appeal based on Merit Rule 13.0240. At the hearing, the Board asked Mr. Grablis if, despite the late date, he was prepared to go forward and oppose the motion to dismiss, or whether he preferred to have a continuance. Mr. Grablis stated that he wanted to go forward.

Merit Rule 13.0240 provides: "A permanent or probationary employee may voluntarily request placement on transfer list by filing an application with the agency, department of interest or the State Personnel Office when vacancies are announced and applications are being accepted." As

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the State points out in its motion to dismiss, however, Merit Rule 13.0210 provides that "[a]n employee may be transferred within an agency or department by an appointing authority from one position to another within the same class."

Mr. Grablis acknowledged at the hearing that while he was transferred from New Castle County to another territorial area covering parts of Kent and Sussex County, this was to another position in the same class. Accordingly, Mr. Grablis fails to state a claim for a violation of Merit Rule 13, and that portion of his appeal is dismissed. The Board made it clear to Mr. Grablis that he could introduce evidence regarding his transfer in support of his claim for age discrimination.

Summary of the Evidence

Mr. Grablis called as his first witness Frank Brown, a 22-year employee of the State Lottery Office. Mr. Brown testified that during his tenure at the Lottery Office, working for five different directors in various positions, he did not know of any instance in which Mr. Grablis had been reprimanded for his job performance, or had violated any office rules. Through the testimony of Mr. Brown, the Board admitted into evidence (marked for identification as "G-1") a "Certification From of the State of Delaware Personnel Office" showing that Theodore R. Grablis had been hired on August 12, 1980 by the State Lottery Office for the position of "Field Sales Representative -- New Castle."

Mr. Grablis called as his second witness Wayne Lemons, the Director of the State Lottery Office. Mr. Lemons testified that in July 1996 he had approved a plan to restructure the geographic regions for the lottery field representatives. As as part of that plan Mr. Grablis had been transferred from Territory 2 (Wilmington/New Castle County) to Territory 3 (Kent County). The plan was intended to increase lottery sales. Mr. Lemons did not know specifically why Mr. Grablis was

assigned to Territory 3, but he said that age was not a criterion for the reassignments of any of the five field representatives.

Mr. Grablis then took the stand and testified that "I was hired for New Castle County. That was where I wanted to work." He felt that he was being discriminated against on the basis of his age in favor of Tim Fales, who was re-assigned to his former territory in New Castle County. Mr. Fales was 36 years old at the time, whereas Mr. Grablis was 57. Mr. Grablis testified that Territory No. 2, where he used to work, was the "best" of all the territories because it accounted for 30-40% of total business in the State. In contrast, Territory No. 3 where he was transferred was the "poorest" territory, accounting for only \$14-15 million in sales. On cross-examination, the State introduced into evidence (marked for identification as "S-1") a copy of Mr. Grablis' employment application, in which he checked, in response to the question "In what Delaware counties will you accept employment?" both "New Castle" and "All Counties." Mr. Grablis confirmed that as a result of his transfer, there was no change in his salary or his hours of appointment. Furthermore, he still had to report to the State Lottery Office in Dover every morning at 8:00 a.m. with all the other field representatives, just as he had to do when his territory was in New Castle County.

The State called three witnesses: Brian W. Prah; Mary Jane Donnelly; and Wayne Irons. Mr. Prah is the Deputy Director of Sales and Marketing at the State Lottery Office, with supervisory responsibility for all the field representatives. He testified that in July 1996 the State Lottery Office reassigned all of its field representatives. This was consistent with a longstanding office policy to rotate employees and cross-train. For example, in a memorandum dated April 20, 1995 to all lottery employees (marked for identification as "S-2"), he had noted: "All of the Lottery Sales Representatives have either changed territories or job functions within the last two years. We hope to continue this trend in the future as periodic change has two advantages: one for the Lottery, and

one for the individual. The Lottery increases depth in qualified personnel, while the individual increases perception and career options." With regard to the reassignments of field representatives in July 1996, Mr. Prah1 testified that "age never came into" the decision.

Ms. Donnelly is the Personnel Administrator for the Department of Finance. She testified that the following reassignments of field representatives were made in July 1996: Tim Fales, age 36, went from Kent to New Castle County/Wilmington; Barbara Gaddis, age 34, went from inside sales to Sussex; Ted Grablis, age 57, went from New Castle County/Wilmington to Kent; and Robert Lane, age 51, went from Sussex to Newark/Wilmington. See "S-3" (findings of fact from Step 4 decision). Through Ms. Donnelly, the State also introduced into evidence "S-4," a summary statement of the nature of scope of the duties of a Lottery Field Representative.

The last witness called by the state was Mr. Irons, the Manager of Lottery Sales and Retail Development, who supervises the field representatives. Mr. Irons testified that in January 1994, as a result of new procedures mandated by the state vehicles fleet operator, all lottery field representatives (including Mr. Grablis) were required to report to Dover each morning at 8:00 a.m. to pick up a state vehicle, and to return that vehicle to Dover at the end of the day. He further testified that the reassignments in July 1996 were not based on anyone's age, but were necessary due to the dynamics of the lottery business, which had grown from a \$35 to a \$300 million a year organization.

Findings of Fact

Mr. Grablis was 56 years old at the time of the reassignment of his sales territory, and therefore he is within a protected class for purposes of the anti-age discrimination laws. His former

territory was assigned to a younger person, Tim Fales, who was 36 years old at the time, outside the protected class for purposes of age discrimination.

As a result of his reassignment, Mr. Grablis did not lose any salary or benefits. It was a lateral transfer, and all of the other sales representatives were reassigned at the same time. Since 1994, all of the sales representatives had to report each morning to Dover to pick up a state car, which then had to be returned to Dover at the end of the day. Since Mr. Grablis lives in New Castle County, he had to drive to Dover every day irrespective of where his sales territory was.

All of the evidence supports the conclusion that age had nothing to do with the decision to reassign the State Lottery Office field territories in July 1996. The reassignments were in response to the dramatic increase in state lottery sales in recent years. The reassignments were also consistent with longstanding management policy to rotate employees to increase the experience of personnel and their career options.

There was no evidence presented to suggest that the valid business reasons articulated for the reassignments of the field territories were a pretext or a sham used to discriminate against Mr. Grablis for his age.

Conclusions of Law

In order to establish a prima facie case of age discrimination, the complainant must show: (1) he or she is within the protected class; (2) he or she is qualified for the position; and (3) he or she suffered some adverse employment action in favor of someone not within the protected class. See Quaker Hill Place v. Saville, Del. Super., 523 A.2d 947, 954 (1987). Once the complainant establishes a prima facie case, "the burden of production shifts to the person charged with discrimination to articulate a legitimate, non-discriminatory reason" for the employment action. Id.

If the employer articulates a legitimate, nondiscriminatory reason for the employment action, the “complainant then must demonstrate that the proffered reason was a sham.” Id. at 955.

We hold that Mr. Grablis has not established a prima facie case of age discrimination because he did not suffer any adverse employment action. The employment discrimination laws were not designed “to address every decision made by employers” but only “what could be characterized as ultimate employment decisions such as hiring, granting leave, discharging, promoting and compensation.” Page v. Bolger, 645 F.2d 227, 233 (4th Cir.) (en banc), cert. denied, 454 U.S. 892 (1981)).

In some cases, the courts have found that a transfer involved a significant change in management responsibilities so as to be actionable under the employment discrimination laws. We do not find, however, that Mr. Grablis’ reassignment did not alter any of the terms or conditions of his employment. Mr. Grablis may have preferred to work in his old territory in New Castle County, but his transfer to a territory further south did not result in any loss of salary or benefits, or otherwise materially alter the conditions of his employment. While he suggested that the opportunities were better in New Castle because of the larger volume of business, the opportunity to succeed could have been even greater in a region ripe for development of new sales. The only tangible harm to which Mr. Grablis testified was the daily commute from his home in New Castle to Dover. The evidence was undisputed, however, that at least since 1994 all field representatives, including Mr. Grablis, were required to report to Dover every morning to pick up a state car. That did not change with the reassignment of his territory.

We also hold that the State Lottery Office produced ample evidence of a legitimate, non-discriminatory reason for Mr. Grablis’ reassignment. There was a longstanding policy at the State Lottery Office to rotate employees and cross-train. The decision to reorganize and reassign the

NOTE: THIS CERTIFICATION MUST BE RETURNED NOT LATER THAN ONE MONTH FROM DATE OF ISSUE. IT IS INVALID AND WILL NOT BE ACCEPTED AFTER THAT DATE

RECEIVED

Reply to request dated July 8, 1980 From: Lottery -- Mr. Batch

Date of Issue: August 7, 1980

Eligibles certified for the position of Field Sales Representative -- New Castle

Number of positions open 2 Nature of Appointment: Probationary X Limited Term

PRIORITY FOR CANVASSING: 1. LAYOFFS 2. PROMOTIONALS 3. REINSTATEMENTS - APPLICANTS

Serial	Name	Address	Date Interviewed (Indicate Action Taken)
94	James F Martin	731-4192 5 E. Regal Blvd, Newark 19713	TELEPHONE 08/11/80 NOT INTERESTED
90	Clarence A Miller	478-3504 2603 Deepwood Dr. Wilm 19810	2:00 PM 8/12/80 - DECLINED
88 ✓	Stephen Willis	762-5754 210 West 34th St. Wilm 19802	Declined 8/12/80 - AUTOMATIC 12:00 N 08/12/80 - 08/13/80
87	John C. Heerlein	678-1904 23 Greenway Sq. P-34 Dover 19901	11:00 AM 08/12/80 08/14/80 NOTIFIED
87 ✓	Theodore R. Grablis	652-1669 228-7th Ave. Wilm 19805	Hired 10:00 AM 08/12/80 08/13/80 AUTOMATIC
<i>FLANK TRAIL</i>			
<i>THE HARRY OFFICE</i>			
<i>HAD OFFERED A POSITION TO STEPHEN WILLIS. HE CALLED</i>			
<i>ME APPROX 7:00 PM 8/21/80 AND STATED THAT SOMETHING HAD HAPPENED, WHICH HE</i>			
<i>NOT ANTICIPATED. HE WOULD BE UNABLE TO ACCEPT THE POSITION</i>			

Director *[Signature]* *THE SECRET*
b/b O'Brien Appointment Authority *[Signature]*
 Title Director

APPLICATION FOR EMPLOYMENT/EXAMINATION
UNAUTHORIZED RELEASE OF THIS INFORMATION COULD BE A VIOLATION OF THE DELAWARE CODE

PLEASE TYPE OR PRINT ALL INFORMATION

NAME	Theodore (FIRST)	R. (MIDDLE INITIAL)	Grablis (LAST)	SOCIAL SECURITY NUMBER	222-24-353
ADDRESS	228-7th AVE. (STREET)		Wilm. (CITY)	Del. (STATE)	19805 (ZIP)
TELEPHONE	652-1669 (RESIDENCE)	none (BUSINESS)	MAY WE CALL YOU AT WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO		
PRESENT STATE OF DELAWARE EMPLOYEE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, INDICATE FACILITY:					
ARE YOU CLAIMING PREFERENCE AS A VETERAN OR AS THE UNREMARKED WIDOW OF A DECEASED OR DISABLED VETERAN? (ONLY DELAWARE VETERANS ARE ELIGIBLE) <input type="checkbox"/> YES <input type="checkbox"/> NO. IF YES, DD FORM 214 MUST ACCOMPANY APPLICATION AND INDICATE HERE HOME OF RESIDENCE (CITY & STATE) AT TIME OF ENTRY INTO ARMED FORCES.					
HAVE YOU EVER BEEN CONVICTED OF A CRIMINAL OFFENSE? (Other than Traffic Violation) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, explain					

[COMPLETION OF A SUPPLEMENTAL QUESTIONNAIRE REQUIRED FOR SOME JOBS]

POSITION(S) APPLIED FOR (LIST BY TITLE) FIELD Sales Rep. code 17225 JUL 28 1980

CHECK THE TYPE(S) OF EMPLOYMENT YOU ARE WILLING TO ACCEPT: <input checked="" type="checkbox"/> PERMANENT <input type="checkbox"/> PERMANENT PART-TIME <input type="checkbox"/> TEMPORARY	IS THERE A MINIMUM SALARY YOU WILL ACCEPT? <u>NO</u> IF YES, SHOW \$ _____ PER YEAR
IN WHAT DELAWARE COUNTIES WILL YOU ACCEPT EMPLOYMENT? <input checked="" type="checkbox"/> NEW CASTLE <input type="checkbox"/> KENT <input type="checkbox"/> SUSSEX <input checked="" type="checkbox"/> ALL COUNTIES	

TRANSCRIPT MAY BE REQUIRED AT A LATER DATE	NAME & LOCATION	DATES ATTENDED MONTH & YEAR FROM TO	TOTAL CREDITS EARNED	DIPLOMA OR DEGREE RECEIVED	MAJOR SUBJECT	MINOR SUBJECT
HIGH SCHOOL	SALESIANUM	1954-1957	FULL	YES	College Prep	
COLLEGE OR UNIVERSITY	Del. State Univ. Newark, Del.	1957-1959	40	NO	Business	Management
(UNDER-GRADUATE)						
GRADUATE SCHOOL						
OTHER EDUCATION	P.M.C. Chester, PA.	1961-1963	43	NO	Management	

CIRCLE HIGHEST GRADE COMPLETED: 1 2 3 4 5 6 7 (8) 9 10 11 (12) 1 (2) 3 4 5 6 7

(GRAMMAR SCHOOL) (HIGH SCHOOL) (COLLEGE) (GRAD)

IF NOT A HIGH SCHOOL GRADUATE, DO YOU HAVE A HIGH SCHOOL EQUIVALENCY CERTIFICATE? ☐ YES ☐ NO

DO YOU TYPE? <input type="checkbox"/> YES <input type="checkbox"/> NO (ATTACH PROFICIENCY RATING)	DO YOU TAKE SHORTHAND? <input type="checkbox"/> YES <input type="checkbox"/> NO (ATTACH PROFICIENCY RATING)	CERTIFICATE VALID FOR ONE YEAR FROM DATE OF TESTING OR GRADES
--	--	---

LIST ANY EQUIPMENT OR MACHINES WITH WHICH YOU ARE PROFICIENT AND OTHER SKILLS RELATED TO THE POSITION FOR WHICH YOU ARE APPLYING FOR EXAMPLE, SKILLS WITH MACHINES, LANGUAGE SKILLS, etc.

LIST CURRENT PROFESSIONAL LICENSES OR CERTIFICATES:

S-1

CONFIDENTIAL
NAME OF:

THEODORE R. GRABLIIS

PERSONAL
DATA:

Birthdate: 7/28/39
Height: 5 feet, 11 inches
Weight: 195 lbs.
Marital Status: Divorced, 3 Children

EDUCATION:

Salesianum High School
Wilmington, Delaware

1957

University of Delaware
Newark, Delaware
Business Course

1957 - 1959

P.M.C. Evening Division
Management Course

1961 - 1963

Various Technical Schools in Seals & Chemicals by Chesterton Corporation.

EXPERIENCE:

7/79 to
1/80

Grubb Lumber & Mill Work
Wilmington, Delaware
Building Material Sales Representative
Responsible for the sale of lumber, millwork and trusses which included bids & proposals. Territory: Delaware, Maryland, New Jersey & Pennsylvania.

1/79 to
7/79

Smith Koch, Inc. (Distributor of Industrial Pump Seals)
Philadelphia, Pa.
(Chesterton Specialist)
Responsible for all sales, problem solving, trouble shooting, instructing of Chesterton products in mechanical seals, mechanical packing and industrial chemicals for their Philadelphia Market. Other duties included purchasing and controlled inventory.

1976 to
1979

Cooney Brothers (Distributor)
Philadelphia, Pa.
(Chesterton Specialist)
Duties: Same as above.

1973 to
1976

T. G. of Delaware, Inc.
Wilmington, Delaware
President
Owned & managed tavern & package business - 4 employees

1960 to
1973

N & F Mfg. Co., Inc.
Elkton, Maryland
Plant & Business Manager
Responsible for the manufacture of explosive and pyrotechnic items. 180 employees; gross sales \$2 million. Involved in all phases of business: sales-packing-safety-hiring, etc.

REFERENCES:

Shall be furnished upon request.

WILMINGTON AREA OFFICE
REC'D 1st MAIL

JUL 22 1980

WILMINGTON, DEL.

Ted Grabliis

INVALID AND WILL NOT BE ACCEPTED AFTER THAT DATE

July 8, 1980

From: Lottery -- Mr. Batch

Number of positions open	2	Nature of Appointment:	Probationary	X	Limited Term
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ORITY FOR CANVASSING: 1. LAYOFFS 2. PROMOTIONALS 3. REINSTATEMENTS - APPLICANTS

FRANK BROWN	THE LOBBY OFFICE	HAD OFFERED A POSITION TO STEPHEN KILLIS. HE CALLED
	ME APPROX 7:00 P.M. 8/21/80 AND STATED THAT SOMETHING HAD HAPPENED, WHICH HE	
	NOT ANTICIPATED. HE WOULD BE UNABLE TO ACCEPT THE POSITION	

[Signature]
Factor

J.P.E. Cooney
D/O Preston

Appointing Authority Title Director
Kay L. Sater
8/21/80

Memorandum

To: All Lottery Employee's
CC: W. Lemons, M.J. Donnelly
From: Brian W. Prah
Date: April 20, 1995
Subject: Change of Job Assignments

On Monday, May 1, 1995 Wayne Irons and John Frazier will be exchanging job functions for a period of 12 months.

As a relatively small organization, with a myriad of different responsibilities, it has become increasingly important that we all be able to "exchange hats" and be crossed trained in as many different areas as is feasible.

All of the Lottery Sales Representatives have either changed territories or job functions within the last two years. We hope to continue this trend in the future as periodic change has two advantages...one for the Lottery...and one for the individual : the Lottery increases depth in qualified personnel, while the individual increases perception and career options.

Wayne and John will be transitioning next week., so don't be surprised if you see them with two hats on at some time.



territories was discriminatory against him because of his age because someone "twenty years his junior" was reassigned to the territory he previously covered. Mr. Grablis also stated that it "hurt his feelings not to be trusted", but offered no explanation or documentation to support this statement and how it applied to his charge of age discrimination. Mr. Grablis also stated that his previous territory was ranked number one in sales, but did not offer supporting documentation nor did he relate that statement to his grievance.

FINDINGS:

Merit Rule 13.0210 states that "any employee may be transferred within an agency or department by an appointing authority from one position to another position within the same class." Transfer is further defined in Chapter Two of the Rules for a Merit System of Personnel Administration as "any movement between positions in the same class or a different class with the same paygrade or any change of work location of more than five (5) miles, and/or movement in or out of the Wilmington city limits where the class does not change." Mr. Grablis did not need to apply for a transfer since Merit Rule 13.0210 provides for the appointing authority to make such reassignment of staff.

As explained to Mr. Grablis during the grievance hearing, there have been several changes in sales territory assignments in the past four years. In addition, several of the sales territories have been revised to meet population shifts, construction of new housing developments and retail centers, and to meet changing business requirements. It is standard practice in the sales and marketing field for staff to rotate among the different sales territories. There are several reasons for this: to provide the organization with a different "look" at the territory, help keep the sales representatives from becoming stale, provides trained back-up for each position including familiarity with the territory and its retailer base, and to help maintain the integrity of the State Lottery.

The decision to reassign sales territories was not directed at Mr. Grablis. It was not undertaken because of Mr. Grablis's age or any other non-bona fide job related reason. There are currently five Lottery Field Representatives, four of whom perform field sales and marketing work, while the remaining position provides inside sales. All five employees were reassigned to new sales territories as follows:

EMPLOYEE	AGE	PREVIOUS TERRITORY	CURRENT TERRITORY
R. Dion	54	Newark/Wilm.	Inside Sales
T. Fales	36	Kent	New Castle/Wilm.
B. Gaddis	34	Inside Sales	Sussex
T. Grablis	57	New Castle/Wilm.	Kent
R. Lane	51	Sussex	Newark/Wilm.

Class Code: 17225

Purchasing, Sales and Stores Group

Industrial and Retail Sales Series

CLASS TITLE: Lottery Field Representative

SUMMARY STATEMENT:

This is field sales work monitoring, developing and providing guidance and support services to sales outlets to promote lottery programs and assure profitability in an assigned territory.

NATURE AND SCOPE:

Class incumbents report to an administrative superior and are responsible for training agents in applicable regulations and procedures and in appropriate merchandising and promotional techniques. Incumbents may frequently officiate televised drawings.

PRINCIPAL ACCOUNTABILITIES:

1. Provides guidance to lottery sales agents in effective merchandising and sales promotional techniques. Motivates agents to promote ticket sales. Suggests placement of point of sale materials and effective customer relations strategies.
2. Trains agents in operating procedures, rules and regulations for playing and selling the various games, paying winning claims, preparing reports for account settlement and operating on-line terminals and other equipment.
3. Interviews potential agents and solicits applications for lottery licenses. Completes site survey forms, and recommends disposition of applications based upon analysis of data gathered.
4. Officiates televised drawing of winning numbers. Conducts test drawing to ensure that security procedures are followed and that equipment functions properly. Determines correctness of drawing and maintains drawing affidavits, transaction control logs, personnel pay sheets and other records.
5. Explains to agents discrepancies in account settlement reports and may collect balance due from agent.
6. Investigates and resolves complaints involving lottery agents. May require interface with irate customers and/or agents.
7. Performs related work as required.

KNOWLEDGE, SKILLS, AND ABILITIES:

- Knowledge of effective sales/marketing techniques and strategies including motivational sales techniques.
 - Knowledge of Lottery rules and regulations applicable to various games and programs.
 - Knowledge of effective public relations techniques.
- 5-4

KNOWLEDGE, SKILLS AND ABILITIES (Cont.):

- Knowledge of sales area demographics.
- Knowledge of basic business accounting and recordkeeping.
- Knowledge of Lottery drawing procedures.
- Skill in making decisions based on visual assessment of drawing procedures for televised drawings.
- Skill in establishing and maintaining effective working relationships with sales agents.
- Ability to project a professional sales image.
- Ability to enforce Lottery rules and regulations.

MINIMUM QUALIFICATIONS:

1. Knowledge of sales and marketing methods and techniques.
2. Knowledge of the principles and practices of conducting training sessions.
3. Ability to communicate effectively both orally and in writing.

Class Established: 7/83

Latest Revision: 7/87

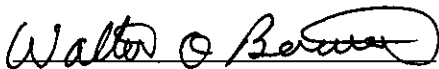
Min. Quals.: 8/88


territories of the field representatives was made in response to the dramatic changes in recent years in the lottery business in Delaware.

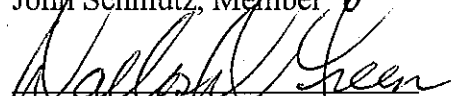
Mr. Grablis did not demonstrate that these legitimate business reasons were a sham or pretext to discriminate against him on the basis of age. Indeed, the evidence showed that all four of the sales representatives changed positions, two of whom were over 50 years old, and two of whom were under 40 years old. There is no evidence of any disparate treatment in the effects of these reassignments.

IT IS SO ORDERED, for the reasons stated above, that the appeal from the Step 4 decision of the State Personnel Office is found to be without merit, and is accordingly dismissed.


Katy K. Woo, Chair


Walter Bowers, Member


John Schmutz, Member


Dallas Green, Member

Mailing Date: October 30, 1997


Distribution:

Original: File

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Michael F. McTaggart, Deputy Attorney General

Merit Employee Relations Board

Katy K. Woo, Chair

Walter Bowers, Member

John Schmutz, Member

Dallas Green, Member

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